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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
800 Data Base Access Tariffs) CC Docket No. 93-129
and the 800 Service)
Management System Tariff)

OPPOSITION OF NATIONAL DATA CORPORATION

National Data Corporation ("National Data"), by its attorneys, hereby opposes the application for review of the Common Carrier Bureau's Order of January 31, 1994 ("Order"),¹ which Ameritech Services, the Bell Atlantic Telephone Companies, Pacific Bell, the NYNEX Telephone Companies, and U S West Communications, Inc. (collectively, "the participating LECs") filed in the above-captioned proceeding on March 2, 1994.² In their application for review, the participating LECs have asked the Commission to reverse the Bureau's denial of their request for waiver of the requirement that the LECs disclose the computer models used to establish their respective rates for vertical 800 data base services. As set forth below, the participating LECs' application for review should be denied.

¹ See 800 Data Base Access Tariffs, CC Docket No. 93-129, DA 94-99 (released Jan. 31, 1994) [hereinafter "Order"].

² See Application for Review of the Participating Local Exchange Carriers, CC Docket No. 93-129 (filed Mar. 2, 1994) [hereinafter "Application for Review"].

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I. THE COMMISSION SHOULD DENY THE PARTICIPATING LECs' APPLICATION FOR REVIEW BECAUSE THE BUREAU PROPERLY FOUND THAT FULL PUBLIC DISCLOSURE IS NECESSARY TO ENSURE THE ACCURACY OF THE PROPOSED 800 DATA BASE RATES.

The Bureau, acting on delegated authority, initiated this investigation because it was presented with substantial evidence that the LECs had unlawfully attributed costs to basic 800 data base access in developing the tariffs which they filed with the Commission on March 1, 1993.³ On July 19, 1993, the Bureau issued an order which designated the issues to be examined in this proceeding ("Designation Order").⁴ In that order, the Bureau required the LECs to disclose detailed cost support -- including computer models -- used to develop their proposed rates.⁵ Responding to the LECs' concerns about the confidentiality of their cost models, the Bureau afforded each LEC that was unwilling to disclose its cost model the option of using other means to justify its proposed rates.

Soon after the release of the Designation Order, the participating LECs and certain other LECs petitioned the Commission to waive the requirement that they disclose the cost models used to determine their rates for both basic and vertical 800 data base

³ See 800 Data Base Access Tariffs and the 800 Service Management System Tariff, 8 FCC Rcd 3242 (1993). As National Data and others pointed out, the LECs had proposed rates for basic 800 data base access that were based on costs other than those "incurred specifically" for the implementation and operation of data base access. See, e.g., Consolidated Petition to Reject or, in the Alternative, to Suspend and Investigate of National Data Corporation, CC Docket No. 86-10, at 6-9 (filed Mar. 18, 1993).

⁴ See 800 Data Base Access Tariffs and 800 Service Management System Tariff, 8 FCC Rcd 5132 (1993) [hereinafter "Designation Order"].

⁵ These models include the Common Channel Signalling Cost Information System, a computer model developed by Bell Communications Research, Inc. and used by the participating LECs.

services. In support of their requests, the LECs argued that their cost models were "trade secrets" and confidential commercial information within the meaning of the Freedom of Information Act and thus protected from disclosure. In its January 31 Order, the Bureau denied the LECs' petitions. In doing so, the Bureau found that full disclosure of the cost models or other methodologies used to develop rates would "aid the discharge of the agency's functions" by affording interested parties an opportunity for meaningful review of the LECs' cost data.⁶ In particular, the Bureau noted that "the benefit of allowing interested parties to examine and test the cost models is that they will be able to either detect flaws in the model or find ways that it could potentially be manipulated."⁷ Such critical review would serve the public interest by ensuring that the LECs' rates were just and reasonable. In addition, the Bureau affirmed its earlier finding that LECs not wishing to disclose their cost models could, and indeed were required to, use other cost methodologies to justify their rates.

From National Data's perspective, the most telling aspect of the LECs' application is that it "deals only with 800 data base 'vertical features.'"⁸ The participating LECs are not challenging the Bureau's directive that the LECs either disclose their cost models or use alternative methodologies to justify their rates for basic 800 data base access services. The participating LECs appear to have finally conceded that the exogenous costs associated with basic 800 data base access can be measured using cost

⁶ Order at ¶ 11.

⁷ Id.

⁸ See Application for Review at 2 n.6 (emphasis added).

methodologies other than proprietary cost models, and that the Bureau has struck a reasonable balance by requiring disclosure of either the cost model or another means of justifying the LECs' rates.

In their application for review, the participating LECs contend only that the Bureau exceeded its delegated authority in requiring the LECs to disclose the cost models used to develop their respective vertical 800 data base rates (or supply another means of justifying those rates). In particular, the participating LECs' claim that the Bureau's disclosure requirement with respect to vertical 800 data base access services is contrary to the Commission's decision in the Open Network Architecture ("ONA") tariff proceeding. In its order of December 15, 1993 ("ONA Order") in that proceeding, the Commission had ruled that the carriers' Switching Cost Information System computer model was protected from public disclosure.⁹ In their application for review, the participating LECs claim the Commission's ONA Order should be controlling in this proceeding because here, as in the ONA proceeding, the LECs used proprietary computer models to develop tariff rates for new services based on "forward-looking" costs.

The participating LECs, however, fail to mention that in the ONA tariff proceeding the Commission emphasized that the protective measures it was employing were both unusual and essential because of the potential for significant harm to the switch vendor market. The Commission also made clear that such measures would not be employed in the future without substantial justification. No such justification is presented

⁹ See Open Network Architecture Tariffs of the Bell Operating Companies, 9 FCC Rcd 180, 183 (1993).

in this proceeding. Indeed, the Bureau has correctly found that the LECs' concerns about confidentiality can be satisfactorily addressed by permitting the LECs to use other methods to justify their respective rates and, in any event, these concerns are outweighed by the public interest in full disclosure.

Moreover, the Bureau addressed the LECs' concerns by ruling that public disclosure of the LECs' cost models would not be necessary if interested parties that sign protective agreements were given reasonable access to the models.¹⁰ In rejecting this approach, the LECs have again failed to explain why such a protective order -- which is commonly used in administrative and judicial proceedings to safeguard information far more sensitive than the LECs' cost models -- is inadequate. The Commission has employed similar protective orders in the past without incident. Tellingly, the LECs have not argued that such orders have been subject to abuse by interested parties in other proceedings.

Sound public policy dictates that the LECs should not be permitted to develop and justify their rates using "secret" computer models that can be withheld from public scrutiny. Any other conclusion would insulate the LECs' rates from the crucible of the adversarial process and would likely result in inaccurate and probably inflated rates. Plainly, such a result would disserve the public interest. In considering the participating LECs' application, the Commission should keep in mind the importance of the issue which it raises. As the LECs implement data base-dependent intelligent networks, disclosure of the LECs' cost models or alternative methodologies will become

¹⁰ See Order at ¶ 15.

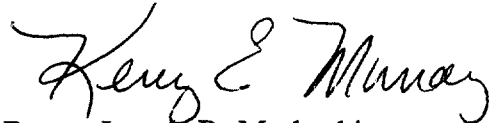
increasingly important in ensuring just and reasonable rates. Allowing the LECs to withhold their cost models in this proceeding would establish an unfortunate precedent against informed public participation in future tariff review proceedings involving intelligent network services.

II. CONCLUSION

For all of the reasons set forth above, the Commission should deny the participating LECs' application for review.

Respectfully submitted,

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I, Anne Fitzgerald, hereby certify that copies of the foregoing Opposition of National Data in CC Docket No. 93-129, were served by hand or by First-Class United States mail, postage prepaid, upon the parties appearing on the attached service list, this 17th day of March, 1994.


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